

year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

**§ 400.54 Submission and accuracy of production reports.**

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

**§ 400.55 Qualification for actual production history coverage program.**

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable

records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the two most recent crop years are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average

yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.

(f) FCIC may determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and T or D-Yields are not provided in the actuarial documents,

(2) If actual yield exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated;

(ii) If tree or vine damage, or cultural practices will reduce the production level;

(iii) if more than two percent of the trees or vines have been removed within the last two years; or

(iv) If yield trends are evident and yields greater than the average yield are requested by the insured.

(g) APH yields will not be approved the first insurance year on perennial crops until an inspection acceptable to FCIC has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(h) APH Master Yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which Master Yields are available. To qualify, the producer must have at least four recent continuous crop years' annual production reports and must certify

the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

**§ 400.56 Administrative appeal exhaustion.**

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

**§ 400.57 [Reserved]**

**Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers**

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96-511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

**§ 400.65–400.66 [Reserved]**

**Subpart I [Reserved]**

**Subpart J—Appeal Procedure**

AUTHORITY: 7 U.S.C. 1506(l), 1506(p)

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

**§ 400.90 Definitions.**

*Act.* The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

*Administrative review.* A review within the Department of Agriculture of an adverse decision.

*Adverse decision.* A decision by an employee or Director of the Agency that is adverse to the participant. The term

includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

*Agency.* RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

*Appellant.* Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term “appellant” includes an authorized representative.

*Authorized representative.* Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

*Certified State.* A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

*FOSD.* The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

*FSA.* The Farm Service Agency, an agency within USDA, or its successor agency.

*Good farming practices.* For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

*Insured.* An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and